

Oregon Food Bank Testimony to House Ways and Means Committee

re: 2/14/13 Hearing on Tax Reform and Charitable Contributions

I am Jeff Kleen, public policy advocate for Oregon Food Bank. Chairman Camp, Ranking Member Levin, and members of the House Ways and Means Committee, thank you for the opportunity to submit this statement for the record on behalf of Oregon Food Bank.

We look forward to the committee's examination of tax reform and the role charitable giving incentives such as the charitable tax deduction and the food donation tax deduction play in encouraging monetary and in-kind donations to the nation's nonprofit organizations, including the 20 food banks that make up the Oregon Food Bank Network.

Oregon Food Bank believes no one should be hungry. With sufficient public will and support of the entire community, we believe it is possible to eliminate hunger and its root causes.

Since 1982, Oregon Food Bank (OFB) has been leading the fight against hunger in Oregon and southwest Washington by collecting and distributing food through a network of four OFB branches and 16 independent regional food banks. The OFB Network helps nearly 1 in 5 households in our service area fend off hunger. OFB also leads statewide efforts to increase resources for hungry families and to eliminate the root causes of hunger through advocacy, nutrition education, garden education, and helping communities strengthen local food systems.

Oregon Food Bank relies heavily on federal charitable giving incentives as tens of thousands of Oregonians contribute to our efforts to end hunger each year. More than half of OFB's annual revenue comes from the generosity of individual donors and we know that many, many of these donors rely on federal charitable giving incentives to deepen their support of food banking activities. In fact, in an average year Oregon Food Bank will send about 70,000 thank-you letters, along with receipts for contributions, to *individuals* who contribute to our organization.

Times are tough for nonprofits. The demand for Oregon Food Bank services continues to grow even as public-sector support and other donor support has leveled off or even declined. We simply cannot afford any disincentive from Congress that would negatively impact the financial support we receive from so many Oregonians.

OFB Network members utilize local, state, and national public/private partnerships to maximize the impact of USDA commodities and provide the most complete and nutritious food packages available. In our FY2012, 81.7 million pounds of food was distributed through the OFB statewide network. As demand has increased and other food streams have declined, food banks have to increase the amount of food they purchase. Purchased food now comprises 32 percent of the food we distribute. Tax policy that provides incentives for donations is critical to the ability of our food banks and other emergency food providers to meet the need in their communities.

Since the Revenue Act of 1917 first created the charitable income tax deduction, our nation's tax system has strongly encouraged Americans to give back to their communities by providing tax deductions for contributions to charitable organizations. Charitable donations remain the primary source of funding for Oregon Food Bank and other nonprofits nationwide. This donation stream is challenged by declines in giving over the last few years. The charitable tax deduction is unique among federal tax deductions in that it encourages tax decisions that strengthen communities, not to provide benefit to individual taxpayers. It also plays an important role in donor behavior; while the majority of donors report donating funds to make a difference, tax incentives play a role in how often and how much these donors continue to donate. The charitable giving incentive is also strongly supported by the American public, with 7 in 10 Americans responding in a 2011 Gallup poll that they oppose eliminating the charitable tax deduction.

Oregon consistently ranks above average in terms of individual giving. The proposals to cap tax exemptions for giving at any rate would affect Oregon giving broadly, but especially at the highest levels of giving, where again, Oregon has among the most generous donors in the nation.

Any changes to charitable giving incentives that would further reduce charitable giving would have a detrimental impact on the ability of OFB and our network members to help hundreds of thousands of Oregonians experiencing hunger have enough to eat. Federal tax incentives to encourage charitable donations help OFB raise the funds to address the shortfall in food to meet increased need among struggling Oregonians. In FY2012, individual donors gave \$9,003,560 to OFB. This represents 57 percent of all funds given to OFB.

Along with the charitable giving tax deduction, the food donation tax deduction (Internal Revenue Code Section 170 e3) is a critical tool for Oregon Food Bank Network members to source donated food from restaurants, retailers, farmers and manufacturers. The deduction provides an incentive for businesses to donate fit and wholesome food inventory to a 501(c)3 organization serving people experiencing poverty and hunger. The deduction seeks to capture food that would otherwise be wasted by providing an incremental tax deduction over the cost of goods sold if the food is donated to a 501c3. Without Section 170e3, there is little incentive for a business to donate the food verses dumping it and in many cases it would be less expensive for the business to dump than donate the food.

Since the inception of the food donation tax deduction in 1976, the provision was available to C corporation taxpayers only. However, as manufacturing efficiencies and improved sales forecasting by food manufacturers decrease the surplus goods donated to Oregon Food Bank, it is vital to secure additional food product that is available across the food industry spectrum, including from small businesses like restaurants, farmers, and retailers. In 2006, as part of the Pension Protection Act, Congress enacted a two year provision expanding the food donation tax deduction to include all business taxpayers as eligible donors, not just C corporations. This temporary provision has been consistently extended, most recently as part of the American Taxpayer Relief Act of 2012. It provides non-C corporations like pass-through entities (Subchapter S corporations, limited liability companies) the ability to take the same enhanced deduction for the contribution of food inventory as C corporations.

Oregon Food Bank strongly believes enactment of the entire Good Samaritan Hunger Relief Tax Incentive Act (S. 166 and H.R. 3729 in the 112th Congress) would help encourage donations of excess food inventory across the food industry spectrum. The legislation would make permanent the temporary provision allowing all qualified business taxpayers (including farmers, retailers, restaurants and food manufacturers) to take a heightened charitable tax deduction for donations of fit and wholesome food to nonprofit charitable organizations that serve those in need.

The legislation would also allow farmers and other “cash method” accounting taxpayers to consider 25 percent of the fair market value of the donated food as the cost to produce the food. Current law does not accommodate the accounting choices that most farmers organized as sole proprietors use and prevents farmers that are sole proprietors from taking the tax deduction. Lastly, the legislation would codify an important tax court ruling, *Lucky Stores, Inc. v. Commissioner of Internal Revenue*, in which the court upheld the right of the taxpayer to determine a reasonable fair market value of donated food rather than the IRS. The Good Samaritan Hunger Relief Tax Incentive Act would provide strong incentives to capture millions of pounds of nutritious food currently going to waste while giving small business owners fair and equitable access to the food donation giving incentives C corporations have had for decades.

We greatly appreciate the opportunity to submit testimony on behalf of Oregon Food Bank and the many Oregonians experiencing hunger we help each year. OFB urges the House Ways and Means Committee to reject any changes to charitable giving incentives that would result in less food and fewer funds donated to the Oregon Food Bank Network. Maintaining the ability of food banks and other nonprofits across the country to continue to serve their clients and provide help to millions of Americans has never been more important. Protecting the charitable giving tax deduction and expanding food donation tax incentives provides the right approach to address the staggering need we are seeing nationwide. We strongly believe these changes to the food donation tax deduction would result in increased donations of nutritious food at a time when they are desperately needed

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